

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MARK MCKINLEY,

Plaintiff,

9:21-cv-678 (BKS/CFH)

v.

SGT. CHRISTOPHER MOORE, C.O. JEFFREY PHILLIPS, C.O. JOHN THORPE, C.O. CLAUDIO ROBUSTIANO, C.O. MICHAEL SARRUBBO, C.O. WILLIAM MURRAY, and C.O. CARMEN MATRESE,

Defendants.

Hon. Brenda K. Sannes, Chief United States District Judge:

VERDICT SHEET

Question 1**Eighth Amendment – Excessive Force**

Has Plaintiff McKinley proven by a preponderance of the evidence each and every element of his Eighth Amendment claim under 42 U.S.C. § 1983 for excessive force against:

| | | |
|-----------------------|-----------|-------------|
| Defendant Moore? | Yes _____ | No <u>X</u> |
| Defendant Phillips? | Yes _____ | No <u>X</u> |
| Defendant Thorpe? | Yes _____ | No <u>X</u> |
| Defendant Robustiano? | Yes _____ | No <u>X</u> |
| Defendant Sarrubbo? | Yes _____ | No <u>X</u> |
| Defendant Murray? | Yes _____ | No <u>X</u> |
| Defendant Matrese? | Yes _____ | No <u>X</u> |

If you answered YES for any Defendant in Question 1, proceed to Question 2. If you answered NO for every Defendant in Question 1, proceed to Question 5 on page 4.

Question 2**Eighth Amendment – Failure to Intervene**

Has Plaintiff McKinley proven by a preponderance of the evidence each and every element of his Eighth Amendment claim under 42 U.S.C. § 1983 for failure to intervene against:

| | | |
|-----------------------|-----------|----------|
| Defendant Moore? | Yes _____ | No _____ |
| Defendant Phillips? | Yes _____ | No _____ |
| Defendant Thorpe? | Yes _____ | No _____ |
| Defendant Robustiano? | Yes _____ | No _____ |
| Defendant Sarrubbo? | Yes _____ | No _____ |
| Defendant Murray? | Yes _____ | No _____ |
| Defendant Matrese? | Yes _____ | No _____ |

Proceed to Question 3 on the next page.

Question 3**Eighth Amendment – Excessive Force and Failure to Intervene – Compensatory Damages**

What amount, if any, do you award as compensatory damages against the Defendant(s) in connection with Plaintiff McKinley's Eighth Amendment claims under 42 U.S.C. § 1983? If one or more of the Defendants are found liable to Plaintiff McKinley for his Eighth Amendment claims under 42 U.S.C. § 1983, the liable Defendants (if more than one) are jointly and severally liable for whatever compensatory damages you determine Plaintiff McKinley has suffered. Accordingly, you should calculate a single sum for Plaintiff McKinley's compensatory damages.

\$ _____

Proceed to Question 4.**Question 4****Eighth Amendment – Excessive Force and Failure to Intervene – Punitive Damages**

Do you find that Plaintiff McKinley is entitled to an award of punitive damages in connection with either of his Eighth Amendment claims under 42 U.S.C. § 1983 against:

| | | |
|-----------------------|-----------|----------|
| Defendant Moore? | Yes _____ | No _____ |
| Defendant Phillips? | Yes _____ | No _____ |
| Defendant Thorpe? | Yes _____ | No _____ |
| Defendant Robustiano? | Yes _____ | No _____ |
| Defendant Sarrubbo? | Yes _____ | No _____ |
| Defendant Murray? | Yes _____ | No _____ |
| Defendant Matrese? | Yes _____ | No _____ |

Proceed to Question 5 on the next page.

Question 5

First Amendment – Retaliation – Use of Force

Has Plaintiff McKinley proven by a preponderance of the evidence each and every element of his First Amendment claim under 42 U.S.C. § 1983 for retaliation against Defendant Moore arising from the use of force on Plaintiff on March 11, 2020?

Yes _____ No X

If you answered YES in Question 5, proceed to Question 6. If you answered NO in Question 5, proceed to Question 8 on the next page.

Question 6

First Amendment – Retaliation – Use of Force – Compensatory Damages

What amount, if any, do you award as compensatory damages in connection with Plaintiff McKinley's First Amendment claim under 42 U.S.C. § 1983 for retaliation against Defendant Moore arising from the use of force on Plaintiff on March 11, 2020?

\$ _____

Proceed to Question 7.

Question 7

First Amendment – Retaliation – Use of Force – Punitive Damages

Do you find that Plaintiff McKinley is entitled to an award of punitive damages in connection with his First Amendment claim under 42 U.S.C. § 1983 for retaliation against Defendant Moore arising from the use of force on Plaintiff on March 11, 2020?

Yes _____ No _____

Proceed to Question 8 on the next page.

Question 8

First Amendment – Retaliation – Misbehavior Report

Has Plaintiff McKinley proven by a preponderance of the evidence each and every element of his First Amendment claim under 42 U.S.C. § 1983 for retaliation against Defendant Moore arising from Defendant Moore's filing of a misbehavior report against Plaintiff?

Yes _____ No X

If you answered YES in Question 8, proceed to Question 9. If you answered NO in Question 8, your deliberations are complete. The Foreperson should sign and date the bottom of this page and inform the Court Security Officer that a unanimous verdict has been reached.

Question 9

First Amendment – Retaliation – Misbehavior Report – Compensatory Damages

What amount, if any, do you award as compensatory damages in connection with Plaintiff McKinley's First Amendment claim under 42 U.S.C. § 1983 for retaliation against Defendant Moore arising from Defendant Moore's filing of a misbehavior report against Plaintiff?

\$ _____

Proceed to Question 10.

Question 10

First Amendment – Retaliation – Misbehavior Report – Punitive Damages

Do you find that Plaintiff McKinley is entitled to an award of punitive damages in connection with his First Amendment claim under 42 U.S.C. § 1983 for retaliation against Defendant Moore arising from Defendant Moore's filing of a misbehavior report against Plaintiff?

Yes _____ No _____

Your deliberations are complete. Proceed to the bottom of this page.

The Foreperson should sign and date this Verdict Form and inform the Court Security Officer that a unanimous verdict has been reached.

Foreperson: _____

Date: 2/2/2024